

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

EQUAL EMPLOYMENT OPPORTUNITY  
COMMISSION,

Plaintiff,

v.

GLOBAL HORIZONS, INC., d/b/a  
Global Horizons Manpower, Inc.;  
GREEN ACRE FARMS, INC.; VALLEY  
FRUIT ORCHARDS, LLC; and DOES 1-10  
inclusive,

Defendants.

No.: CV-11-3045-EFS

**ORDER GRANTING THE REMAINDER OF  
THE GROWER DEFENDANTS' JOINT  
MOTION FOR AWARD OF ATTORNEY'S  
FEES AND COSTS**

The Court addresses herein the third of three Orders dealing with the Growers' Petition for Fee Award. ECF No. 626. In its initial Order, ECF No. 666, the Court analyzed the fee request of the attorneys for the Grower Defendants and the objections of the EEOC thereto. As carefully analyzed using the lodestar formula, the Court found that it was reasonable and necessary for the Grower Defendants to retain counsel outside of the Eastern District of Washington given the nature of the case, the motions in the Central District of California and, particularly Seyfarth Shaw, because of its familiarity with both EEOC litigation and the related EEOC litigation

1 in Hawaii against Global Horizons. *Id.* at 9, 10. Additionally, the  
2 Court also found the hours claimed by the attorneys at Stokes  
3 Lawrence, Seyfarth Shaw, and Freeman, Freeman & Smiley were on the  
4 whole quite reasonable given the complexity of the case and the  
5 intensity of the litigation as more fully explained therein. *Id.* at  
6 12, 13. The Court reduced only the Stokes Lawrence fee request of  
7 \$915,734.07 by \$9,189.50 for the reasons stated. *Id.* at 14, 15. On the  
8 issue of hourly rates, the Court noted that the EEOC had not opposed  
9 the hourly rates claimed by Stokes Lawrence and found the hourly  
10 rates claimed by the attorneys and paralegals at Stokes Lawrence  
11 reasonable but reduced the paralegal hourly rates for work done during  
12 certain years. *Id.* at 15, 16.

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14 The EEOC did object to Seyfarth Shaw's request for its hourly  
15 rates charged in Chicago, rates higher than the rates commonly charged  
16 in the Eastern District of Washington. The Court found that there was  
17 insufficient support in the filed declarations for an award of Chicago  
18 hourly rates but permitted Seyfarth Shaw to file supplementation  
19 within a short period of time. The final lodestar analysis was  
20 continued to permit this supplementation.

21 Stokes Lawrence filed that supplementation showing the reduced  
22 total fee award based on the Court's reduction in hours and the  
23 finding of no opposition by the EEOC to its hourly rates in the amount  
24 of \$886,881.82. Included in that supplementation was an additional  
25 Declaration by Mr. Douglas Darch, a Chicago attorney familiar with  
26 Chicago rates and Seyfarth Shaw. ECF No. 668. The EEOC objected. ECF

1 No. 671. The Court found that the pleadings adequately supported an  
2 award to Mr. DeGroff of his Chicago hourly rate but did not support  
3 an award of Chicago hourly rates to the other Seyfarth Shaw attorneys  
4 or paralegals. ECF No. 674. The Court then awarded Seyfarth Shaw fees  
5 based on those hourly rate findings: Chicago hourly rates for Mr.  
6 DeGroff and Eastern District of Washington rates for the other  
7 Seyfarth Shaw attorneys and its paralegals. *Id.* at 3. The Court  
8 required the filing of a revised time chart for Seyfarth Shaw  
9 consistent with the Court's ruling. *Id.* at 3, 4. That revised Seyfarth  
10 Shaw time chart was filed on October 27, 2015. ECF No. 675. It  
11 properly revised the claimed hourly rates with the claimed hours  
12 resulting in a reduced Seyfarth Shaw fee of \$85,156.50. *Id.*, Ex. A  
13 at 4-21.

14 The Court now completes its lodestar analysis. Under the lodestar  
15 method, a two-step process is used to calculate a reasonable  
16 attorney's fee. *Blum v. Stenson*, 465 U.S. 886, 888 (1984). The Court  
17 first calculates the lodestar. The lodestar is calculated by  
18 multiplying the number of hours reasonably expended by the reasonable  
19 hourly rate for such tasks. *Moreno v. City of Sacramento*, 534 F.3d  
20 1106, 1111 (9th Cir. 2008); *Morales v. City of San Rafael*, 96 F.3d  
21 359, 363 (9th Cir. 1996). Although there is a "strong presumption"  
22 that the lodestar is a reasonable fee, the second step requires the  
23 Court to consider whether either an upward or a downward adjustment  
24 is appropriate after considering the totality of the circumstances.  
25 *Perdue v. Kenny A. ex rel. Winn*, 559 U.S. 542, 552 (2010). Ultimately,  
26

1 a reasonable fee is one "that is sufficient to induce a capable  
2 attorney to undertake the representation of" the lawsuit, *Perdue*, 559  
3 U.S. at 552, and which reflects the "level of success achieved by"  
4 the prevailing party, *A.D. v. Cal. Hwy. Patrol*, 712 F.3d 446, 460  
5 (9th Cir. 2013).

6 Because the lodestar is strongly presumed to be a reasonable  
7 fee, an enhancement to the lodestar is appropriate only in rare and  
8 exceptional circumstances. *Perdue v. Kenny A. ex rel. Winn*, 559 U.S.  
9 542, 554 (2010) (recognizing that an enhancement is appropriate if  
10 the district court provides sufficient explanation for why the  
11 circumstances are rare and extraordinary). In the Ninth Circuit, a  
12 district court is to ensure that the lodestar is reasonable by  
13 considering the totality of the circumstances, including the factors  
14 set forth in *Kerr v. Screen Actors Guild, Inc.*, 526 F.2d 67, 70 (9th  
15 Cir. 1975) (relying on *Johnson v. Georgia Highway Express, Inc.*, 488  
16 F.2d. 714 (5th Cir. 1974)), so long as the *Kerr* factors have not been  
17 subsumed by the court in the lodestar analysis. *Pennsylvania v. Del.*  
18 *Valley Citizens' Council for Clean Air*, 478 U.S. 546, 564 (1986). See  
19 also *City of Burlington v. Dague*, 505 U.S. 557, 563 (1992) (ruling  
20 that these factors cannot be considered both in terms of rate/fee and  
21 the ultimate reasonableness—"double counting" is not permitted).

22 The *Kerr* factors are 1) the time and labor required, 2) the  
23 novelty and difficulty of claims involved, 3) the skill required to  
24 properly perform the legal service, 4) whether the attorney was  
25 precluded from other employment due to the lawsuit, 5) the time  
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1 limitations imposed by the client or circumstance, 6) the amount  
2 involved and results obtained, 7) the undesirability of the case, 8)  
3 the nature and length of the professional relationship with the  
4 client, 9) awards in similar cases, and 10) amounts discussed in  
5 settlement negotiations, and 11) the customary fee. Although Kerr  
6 listed whether the fee was a contingent-fee or flat-fee as a factor,  
7 this factor has been removed from the reasonableness analysis. *City*  
8 *of Burlington v. Dague*, 505 U.S. at 564; see also *Davis v. City &*  
9 *Cnty. of San Francisco*, 976 F.2d 1536 (9th Cir. 1992), vacated in  
10 part on other grounds, 984 F.2d 345 (9th Cir. 1993) (recognizing that  
11 whether the fee was a contingent fee is not a factor in either the  
12 initial lodestar calculation or the ultimate reasonableness  
13 assessment). In addition, the Ninth Circuit has noted there is some  
14 question whether the lawsuit's desirability is relevant to the fee  
15 calculation. See *Davis*, 976 F.2d at 1548-49 (citing *Dague*, 505 U.S.  
16 at 566-67).

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18 The determination of the attorney's fee award is within district  
19 court's sound discretion but the court must explain how it came up  
20 with the amount. *Carter v. Caleb Brett LLC*, 757 F.3d 866, 868 (9th  
21 Cir. 2014) (citing *Hensley v. Eckerhart*, 461 U.S. 424, 437 (1983)).  
22 The court has an independent obligation to ensure that the requested  
23 attorney's fees and costs are reasonable. *In re Bluetooth Headset*  
24 *Prods. Liability Litig.*, 654 F.3d 935, 942 (9th Cir. 2011). The  
25 court's explanation "need not be elaborate, but it must be  
26 comprehensible . . . Where the difference between the lawyer's request

1 and the court's award is relatively small, a somewhat cursory  
2 explanation will suffice. But *where the disparity is larger, a more*  
3 *specific articulation of the court's reasoning is expected.*" *Carter*  
4 *v. Caleb Brett LLC*, 757 F.3d 866, 869 (9th Cir. 2014) (quoting *Moreno*  
5 *v. City of Sacramento*, 534 F.3d 1106, 1111 (9th Cir. 2008) (emphasis  
6 added)).

7       The Court has carefully considered both the hourly rates and the  
8 number of hours claimed; as analyzed and adjusted in ECF Nos. 666 and  
9 674, the Court finds them reasonable. The Court has also considered  
10 the Kerr factors, which were not subsumed in the lodestar analysis.  
11 Given the complexity of the issues and the intensity of the litigation  
12 between the Grower Defendants and the EEOC involving the large amount  
13 of damages claimed, and the time and skill required by counsel for  
14 the Grower Defendants to properly represent them, the Court finds  
15 that the reduced fee award of \$886,881.82 to Stokes Lawrence is  
16 reasonable and proper.

17       For the same reasons, the Court also finds a reduced fee award  
18 of \$85,156.50 to Seyfarth Shaw and an award of \$595.00 to Freeman,  
19 Freeman & Smiley is also reasonable and proper.

20       The taxable costs awarded are set forth in ECF No. 674; no  
21 objections were filed to that award. Therefore, the awarded taxable  
22 cost amount of \$13,399.98 will be included in the attorney-fee-and-  
23 costs judgment.

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1 Accordingly, **IT IS HEREBY ORDERED:**

2 1. The remainder of the Grower Defendants' Joint Motion for Award  
3 of Attorney's Fees and Costs, **ECF No. 626**, is **GRANTED**.

4 2. The Clerk's Office is to enter judgment against the EEOC in  
5 the Grower Defendants' favor in the amount of **\$986,033.30**, which is  
6 based on the following attorney's fees and costs: \$886,881.82, Stokes  
7 Lawrence; \$85,156.50, Seyfarth Shaw, \$595.00, Freeman, Freeman &  
8 Smiley; and \$13,399.98, taxed costs.

9 **IT IS SO ORDERED.** The Clerk's Office is directed to enter this  
10 Order and provide copies to counsel.

11 **DATED** this 2<sup>nd</sup> day of November 2015.

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s/Edward F. Shea

14 EDWARD F. SHEA  
15 Senior United States District Judge  
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